

(1999) 09 DEL CK 0166
In the Delhi High Court
Case No : Criminal W. 606 of 1999

Virender @ Kala and Others	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1999) 5 AD 696 : (1999) 81 DLT 635 : (2000) 52 DRJ 444 : (2000) 1 RCR(Criminal) 23

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Harjinder Singh, for the Appellant; Mr. S.S. Gandhi, Mr. K.C. Mittal and Mr. Maninder Singh, for the Respondent

Judgement

S.K. Agarwal, J.—The petitioner in this petition has challenged the detention order dated 23rd April,1999 passed by the Commissioner of Police, Delhi under sub-section (2) of Section 3 of the National Security Act, 1980, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. It is alleged that the petitioner after completing his graduation joined Delhi Tourism Development Corporation as a salesman in a wine shop: he had clean previous record; on 18-5-1997 a case under the Arms Act was registered at Police Station Nizamuddin. He has been in jail for the last two years. While he was confined in jail impugned order of detention dated 23.4.1999 was passed by the Commissioner of Police and served on him on 25-04-1999. On 20-5-1999 he made a representation requesting for revocation of detention order to the Secretary, Ministry of Home Affairs, Government of India, Department of Internal Security, North Block, New Delhi through the Superintendent, Central Jail, Tihar and to the Chairman, Advisory Board. On 8th June, 1999 petitioner was informed that his representation against the detention order addressed to the Central Government has been considered and rejected.

3. In the reply filed on behalf of respondents 2 and 3 it is stated that the petitioner being a member of dreaded criminal gang, has propensity to use fire-arms and indulge in violence in public place in pursuit of his objectives. He became a grave threat to the maintenance of public order; out of six cases registered against him he has been acquitted in two cases and four cases are still pending in different courts. The witnesses in these pending trial cases are under threat and are overawed by the terror unleashed by his gang: thereby he through his gang is deterring people from coming forward to give evidence; it was felt necessary to detain him under the National Security Act, 1980 as there was every apprehension that very soon he will be released on bail in all the cases registered against him, and after release he will again indulge in the criminal activities prejudicial to the maintenance of public order. Consequently on 23-4-1999 impugned order of detention was passed.

4. In the counter affidavit filed on behalf of Union of India the averments made in the petition are denied. It is claimed that the appropriate Government in this case for addressing the representation by the detenu is the State Government and not the Central Government. However representation addressed by the petitioner to the Central Government was considered and rejected.

5. Mr. Harjinder Singh, learned counsel for the petitioner argued that the petitioner was in jail at the time of passing of the detention order and there was no material on record to show that if he is released he would again indulge in serious offences causing threat to public order and that there was delay in consideration of the representation dated 20-5-1999 addressed to the Union of India and the same was not even placed before the competent authority before calling for the comments. In support of his contentions he relied on the decision of Supreme Court in *P. Paulsamy Vs. Union of India and Another*, .

6. Mr. Maninder Singh, learned counsel for Union of India opposed the above contention and produced official record. Mr. K.C. Mittal, learned standing counsel for NCT of Delhi relied on the counter affidavit filed on behalf of the Commissioner of Police and argued that there was enough material on record to justify the impugned order.

7. The fact that the petitioner has been in jail for two years, prior to 23-4-1999 when the order of detention under the Act was passed against him, has not been denied in counter affidavit filed on behalf of the respondents.

8. With regard to the detention of a person, already in jail law is well settled by several authoritative pronouncements. In *Surya Prakash Sharma Vs. State of U.P. and Others*, :-

"Though the grounds of detention indicate the detaining authority's awareness of the fact that the detenu was in judicial custody at the time of making the order of detention, the detaining authority has not brought on record any cogent material nor furnished any cogent ground in support of the averment made in grounds of detention that if the aforesaid Surya Prakash Sharma is released on

bail he may again indulge in serious offences causing threat to public order."

9. In the grounds of detention it is stated that there is a possibility of the petitioner being granted bail. It is not enough. In Surya Prakash's case (supra) the Supreme Court emphasised that the subjective satisfaction for detaining a person already in jail must be reached on some cogent material that if he is released on bail he may again indulge in serious offences causing threat to public order, which is clearly missing in this case. The impugned detention order on this solitary ground is liable to be quashed. Through the impugned detention order the petitioner was informed that if he desires to make a representation to the Central Government he could address the same to "The Secretary", Ministry of Home Affairs, Government of India, Department of Internal Security, North Block, New Delhi. On 4-5-1999, the petitioner admittedly sent a representation at the correct address. Strongly in the reply affidavit filed on behalf of Union of India it is stated that "the appropriate Government in this case for addressing the representation by the detenu was the State Government and not the Central Government as the detention order in question was passed by the State Government". All this shows complete non-application of mind by the concerned authorities.

10. In view of the above the petition is allowed. The impugned order of detention is quashed. We direct that the petitioner be released forthwith unless he is required to be detained in any other case. No order as to costs.